

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Poochigian Analyst: Kristina E. North Bill Number: SB 1369

Related Bills: See Prior Analysis Telephone: 845-6978 Amended Date: March 22, 2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Student Eligible Fees Credit/FTB Report to DOF Amount of Credits Allowed Each Year & Report Fiscal Impact to Legislature

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced January 19, 2000.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO SUPPORT.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED January 19, 2000, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law, (B&CTL), this bill would allow a credit based on eligible fees paid by the taxpayer on behalf of any student who is a resident of this state. The credit amount would equal 100% of eligible fees up to \$350 and 50% of all fees in excess of that amount.

This bill also would mandate that state revenues supporting the public school system and public institutions of higher learning would not be reduced below the amount that would have been required for that support if the credits provided by this bill had not been authorized. This provision will not be discussed in this analysis as it does not impact the department's programs and operations.

SUMMARY OF AMENDMENT

The March 22, 2000, amendment:

- ☐ limits the amount of the credit to 100% of the eligible fees up to \$350 and 50% eligible fees in excess of \$350 ;
- ☐ provides a repeal date of December 1, 2005, for the credit;
- ☐ deletes from the B&CTL the requirement that a married couple filing separately divide the credit equally;
- ☐ changes the date that the FTB is required to report to the Department of Finance the amount of credits allowed by this bill from each January 1 to July 1 of the year following the filing year; and
- ☐ extends the amount of time for the FTB to prepare the required fiscal impact report to the Legislature from July, 2001, to July, 2002.

Board Position:

<u>X</u> S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ PENDING

Legislative Director

Date

Johnnie Lou Rosas

3/28/00

The March 22, 2000, amendment resolves the policy consideration regarding the sunset date, partially resolves the policy consideration regarding the unlimited credit amount, resolves the two implementation considerations regarding reporting requirements, and resolves the technical consideration regarding the division of the credit between husband and wife under the B&CTL. The remainder of the department's analysis of the bill as introduced January 19, 2000, still applies. The constitutional concern, the remaining implementation and technical consideration, are restated below for convenience.

The proposed amendment would have no effect on the revenue estimate, as the amount of eligible fees paid were estimated to less than \$350.

Constitutional Consideration

This bill would limit the credit to the amount paid for eligible fees on behalf of any student who is a resident of California. However, the amount of the fees are not based on residency of the student. In fact, the fees are the same for residents and nonresidents. This residency requirement may be subject to constitutional challenge on the grounds that it is discriminatory against non-resident students who wish to attend California schools, by virtue of the credit being available only to taxpayers who pay eligible fees on behalf of students who are residents, rather than to all students who attend school within California.

Implementation Consideration

A definition of "student" would clarify on behalf of whom the author wishes the expenses to apply. It is unclear if "student" would include an applicant who is not registered in school at the time of payment of the application fees.

Clarification is needed to determine if the author intended that an employer could elect to pay these expenses "on behalf of" a student who could be either an employee or the dependent of an employee. If this were the case, then perhaps the employer might try to treat the payment as additional deductible compensation. If the technical consideration below is resolved to clearly disallow a deduction for any portion of eligible fees for which this credit is allowed, this implementation consideration would be eliminated.

Technical Considerations

This bill does not provide a credit for a "contribution." Thus, the language disallowing a deduction for any portion of the "contribution" would have no effect. The author may wish to clarify this language.

BOARD POSITION

Support

At its March 27, 2000, meeting, the Franchise Tax Board voted 2-0 to support this bill with the representative for Member B. Timothy Gage, abstaining.